

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 21, 2017

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2016AP534-CR

Cir. Ct. No. 2013CF380

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DAN J. DREXLER,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for St. Croix County:
EDWARD F. VLACK, III, Judge. *Affirmed.*

Before Stark, P.J., Hruz and Seidl, JJ.

¶1 PER CURIAM. Dan Drexler appeals an order denying his motion for additional sentence credit. Because we conclude the circuit court correctly denied the motion, we affirm the order.

¶2 On November 2, 2013, Drexler was arrested for sixth offense operating a motor vehicle while intoxicated, battery to an officer, throwing or discharging bodily fluids at a public safety worker, and resisting an officer. Six days later he was released on bail. Minnesota authorities issued an arrest warrant due to Drexler's violation of the conditions of his supervised release from an alternative to revocation treatment program, and ordered him confined for 180 days for treatment. Drexler was released from Minnesota custody on May 12, 2014. He was sentenced on the Wisconsin charges on October 10, 2014. Drexler seeks jail credit on his Wisconsin sentence for the 180 days he served on the Minnesota confinement, less the six days' credit he was awarded on his Wisconsin sentence from the date of his arrest until he made bail.

¶3 Under WIS. STAT. § 973.155(1)(a) (2015-16):

A convicted offender shall be given credit toward the service of his or her sentence for all days spent in custody in connection with the course of conduct for which sentence was imposed. As used in this subsection, "actual days spent in custody" includes, without limitation by enumeration, confinement related to an offense for which the offender is ultimately sentenced, or for any other sentence arising out of the same course of conduct, which occurs:

1. While the offender is awaiting trial;
2. While the offender is being tried; and
3. While the offender is awaiting imposition of sentence after trial.

¶4 We agree with Drexler that his right to sentence credit does not depend on whether his confinement was in Wisconsin or another state. *See State v. Carter*, 2010 WI 77, ¶¶10-11, 327 Wis. 2d 1, 785 N.W.2d 516. We also agree that sentence credit does not depend on whether the presentence custody in

Minnesota was exclusively the result of the Wisconsin charges. *Id.*, ¶¶31-34. However, the right to sentence credit ends when a defendant is no longer “on hold” in the other jurisdiction, but has begun serving a sentence. *Id.*, ¶¶11, 56-57, 82. Once the sentence begins in the other jurisdiction, the defendant’s custody is no longer factually connected to his presentence custody in Wisconsin. *Id.* Even the primary case Drexler relies upon, *State v. Hintz*, 2007 WI App 113, 300 Wis. 2d 583, 731 N.W.2d 646, applies only to the time the defendant is confined due to “a hold.” *Id.*, ¶¶4, 12. Because Drexler’s confinement was not based on a “hold,” he is not entitled to the sentence credit.

¶5 Much of Drexler’s argument is based on the unfounded assertion that his Minnesota confinement was a probation hold and not a revoked sentence. The record shows—and Drexler’s own account of the Minnesota proceedings confirms—Drexler’s conditional release was revoked and he was ordered to serve a 180-day sanction. Drexler was not being “held” pending investigation, litigation, or disposition.

¶6 Drexler also contends he is entitled to sentence credit because the Wisconsin sentencing court did not indicate the sentence was consecutive to the Minnesota sentence, and therefore the sentence is deemed concurrent under *State v. Coles*, 208 Wis. 2d 328, 332, 559 N.W.2d 599 (Ct. App. 1997). Dual sentence credit is awarded for concurrent sentences. However, Drexler’s particular argument was rejected in *State v. Rohl*, 160 Wis. 2d 325, 330-32, 466 N.W.2d 208 (Ct. App. 1991). The Wisconsin sentence was not imposed until after Drexler’s Minnesota confinement ended. Under that circumstance, his Wisconsin sentence is not considered a concurrent sentence.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE
809.23(1)(b)5. (2015-16).

